



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

CECW-I

30 September 2009

MEMORANDUM FOR Commanders, Division Commands, Districts, and Field Operating Activities

SUBJECT: Operations under a Continuing Resolution (CR) for Fiscal Year (FY) 2010 – Civil Works Program

1. It is expected that the Civil Works Program will begin Fiscal Year 2010 under a CR.
2. Subject to additional Executive Branch guidance, management of the Civil Works appropriated program under a FY 2010 CR will continue to be conducted in accordance with guidance contained in the Energy and Water and Related Agencies Appropriations Act, 2009, Public Law 111-8, Division C (E&WDAA), and the accompanying Joint Explanatory Statement, as reflected in Engineer Circular (EC) 11-2-196, Change No. 1. In addition, the enclosed detailed guidance applies to Civil Works operations under a CR. Upon receipt of any additional Executive Branch guidance, this guidance will be reviewed and adjusted accordingly. Highlights are as follows.
 - a. A program, project, or activity (PPA) may be allotted FY 2010 funds during the CR period (CR funds) if it received funds through the E&WDAA, through the FY 2009 supplemental appropriations act (Public Law 111-32), or through a reprogramming taking place in FY 2009. The term "PPA" is defined in EC 11-2-196, Change No. 1.
 - b. The FY 2009 "baseline" for each PPA as of 30 September 2009 will be the baseline for that PPA during the CR period. For each PPA, both reprogrammings in FY 2009 and reprogrammings during the CR period count toward the reprogramming threshold that is based on the baseline. The term "baseline" is defined in EC 11-2-196, Change No. 1.
 - c. CR funds may be allotted to each PPA only to the extent needed to support obligations during the CR period. Further, obligations of CR funds to continuing contracts must be limited to the amounts needed to pay earnings under the contract terms during the CR period.
3. My point of contact is Mr. Gary Loew, Chief, Civil Programs Integration Division.

FOR THE COMMANDER:

Enclosure

STEVEN L. STOCKTON, P.E.
Director of Civil Works

Programs Management
FISCAL YEAR 2010 DIRECT AND REIMBURSED PROGRAMS – CIVIL WORKS
CONTINUING RESOLUTION

CECW-I

30 September 2009

Operational Guidance

1. Purpose.

a. This document governs execution of Corps of Engineers (Corps) programs and projects using funds appropriated for Fiscal Year (FY) 2010 as authorized by a Continuing Resolution (CR). This document also governs execution following enactment and pending apportionment of annual appropriations for Civil Works. This document provides guidance and is not to be construed as an official legal opinion regarding any particular item in Act language or accompanying reports.

b. Except as provided in this guidance, management of the Civil Works appropriated program will continue to be conducted in accordance with guidance contained in the Energy and Water and Related Agencies Appropriations Act, 2009, Public Law 111-8, Division C, and the accompanying Joint Explanatory Statement, as reflected in EC 11-2-196, Amendment No. 1. This guidance is subject to change to reflect the FY 2010 Continuing Resolution Act and Executive Branch guidance.

2. Applicability. This guidance applies to all HQUSACE elements, Division commands, Field Operating Agencies (FOAs), and District commands having Civil Works responsibilities. It is applicable to all Civil Works appropriations. District and Division commands and FOAs shall inform CECW-I of any problems with the implementation of this guidance.

3. References.

a. ER 37-1-28, Financial Administration - Continuing Resolution Authority, paragraphs 5 and 6, 30 November 2001.

b. ER 37-2-10, Financial Administration - Accounting and Reporting - Civil Works Activities, paragraph 6-10c (1), 1 April 1969, as amended.

c. EC 11-2-196, Change No. 1, Execution of the Annual Civil Works Program, 31 July 2009.

d. CEPR-ZB memorandum, PARC Instruction Letter (PIL) 2006-05, Continuing Contracts and Incrementally Funded Contracts for Fiscal Year 2006, 22 Mar 2006.

e. DoD Financial Management Regulation (FMR), Vol. 3 Chapter 2.

f. House Report 111-203 on Energy and Water Development Appropriations Bill, 2010.

g. Senate Report 111-45 on Energy and Water Development Appropriations Bill, 2010.

h. Executive Order 13475, Protecting American Taxpayers from Government Spending on Wasteful Earmarks, 1 February 2008.

4. **Direct Program.** Pending final FY 2010 appropriations and the associated apportionment and issuance of work allowances and Funding Authorization Documents (FADs), the following guidance will govern use of FY 2010 Civil Works direct discretionary funds.

a. Apportionment of FY 2010 Funds under the CR. HQUSACE anticipates that the Office of Management and Budget will automatically apportion FY 2010 funds for the CR period (CR funds). HQUSACE also may request written apportionment for certain appropriations.

b. Allotment of FY 2010 Funds under the CR. Resourcing under a CR is intentionally constrained to marginal levels by law. The intent is to finance continuing operations at levels of obligation and expenditure that are not detrimental to Congressional prerogatives.

(1) HQUSACE will determine the fractional portion of apportioned funds for each appropriation to be allotted to each Division or FOA. HQUSACE Resource Management Division will allot the CR funds for each appropriation by FAD to Divisions and FOAs. No work allowances for CR funds will be issued pending apportionment of final FY 2010 appropriations; however, work allowances will be issued for carried-over undistributed funds and funds reprogrammed by HQUSACE.

(2) Each Division is responsible for allotting CR funds in the applicable appropriations to districts, by appropriation title. Divisions' distributions to subordinate Districts are formal allotments. Therefore, Districts are accountable for Anti-Deficiency Act violations.

(3) Work does not migrate among appropriations during the CR period. A type of work that was funded from a particular account in FY 2009 will be funded from the same account under the CR.

(4) A program, project, or activity (PPA) may be allotted CR funds if it received funds through the E&WDAA, through the FY 2009 supplemental appropriations act (Public Law 111-32), or through a reprogramming taking place in FY 2009. Receipt of funds under the American Recovery and Reinvestment Act, 2009, Public Law 111-5, in and of itself does not qualify a PPA for CR funds. The term "PPA" is defined in EC 11-2-196, Change No. 1, and includes not only specifically authorized projects but also CAP projects, FUSRAP projects, Remaining Items, and some work items within Remaining Items.

(5) CR funds may be allotted among PPAs disproportionately, that is, a higher percentage of funds available under the CR may be allotted for a PPA with high funding requirements (e.g., award of a fully funded contract) during the CR period and a smaller percentage of funds available under the CR may be allotted for a PPA that will have few funding needs during the CR period. However, the sum of allotments to PPAs in each Division may not exceed the amount allotted to that Division by FAD.

(6) No allotment of CR funds will be made to any new start reconnaissance studies, new start construction projects, including new start separable elements of projects, or any other new start PPAs. Furthermore, no previously unfunded feasibility or PED phase will be initiated using CR funds unless that phase is funded in the tables in both the House and Senate reports for FY 2010.

(7) Divisions and FOAs may not allot any CR funds to a specifically authorized PPA for which neither the House report nor the Senate report identify funds. If the House report or the Senate report provides a positive amount for a specifically authorized PPA, the amount of CR funds allotted to that PPA may not exceed the lesser of the House amount or the Senate amount, which could be zero in either case. Exceptions to the "lesser of" rule may be made when the Division or FOA coordinates with the HQUSACE appropriation manager or program manager, identifying potential source PPA or PPAs within the Division or FOA from which funds would be moved in the event that a reconciliation is required after enactment of regular FY 2010 appropriations.

(8) The CECW-I Continuing Authorities Program (CAP) Program Manager will plan allotment of CR funds to CAP projects and CAP Coordination in conjunction with his or her decisions on the distribution of FY 2009 carryover funds. CR funds may be allotted to CAP projects and CAP Coordination only within the amounts approved by the CAP Program Manager. Notwithstanding amounts approved by the CAP Program Manager, amounts actually allotted are subject to paragraph 4.b.(10).

(9) A work item within a Remaining Item (other than CAP) may receive CR funds if all of the following conditions are met.

(a) The Remaining Item, which is a PPA, is eligible for CR funds in accordance with paragraph 4.b.(4).

(b) If the work item is itself a PPA, it is eligible for CR funds in accordance with paragraph 4.b.(4). (If not, paragraph 4.b.(4) does not apply.)

(c) Either:

(1) The work item is specified in either the House report or the Senate report; or

(2) Within the lesser of the House amount or the Senate amount for the Remaining Item, funds would be available for additional work items over and above the total specified for various work in the House and Senate reports, and the particular work item is approved for CR funding by the HQUSACE Remaining Item program manager.

The HQUSACE Remaining Item program manager may issue supplemental guidance concerning the conditions for approval or pre-approval of work items.

(10) CR funds should be allotted only to the extent they can be obligated during the period of the CR, thereby minimizing potential reconciliation or reprogramming problems.

(11) When allotting CR funds to PPA's prosecuted by contracts that include the DFARS incremental funding clause at DFARS Part 252.232-7007, Divisions should plan allotments that meet the allotment schedule in subparagraph (i) of that clause to avoid funding shortfalls that would require termination of line items or the contract. If planned allotments would require termination of line items or the contract, contact CECW-I prior to the allotment of funds.

(12) Flood Control and Coastal Emergencies Appropriation. No CR funds will be available for the Flood Control and Coastal Emergencies (FC&CE) program. FC&CE-funded activities may be resourced during the CR period using existing unallocated carryover funding. As a result, program requirements during the CR period may be limited to those activities that are necessary to maintain our essential emergency readiness and response capabilities. The following guidance applies to the FC&CE program during the CR period:

(a) Funding allocations for the first quarter FY 2010 will be adjusted to account for already allocated unobligated carry-in funds and will be limited to activities necessary to address emergency management employee salaries and facility costs, conduct scheduled inspections of non-federal flood damage reduction projects, perform critical emergency response training, award and maintain necessary emergency contracts and operate and maintain emergency information systems (EngLink) and Deployable Tactical Operation Systems (DTOS), and conduct emergency response operations.

(b) Funds already allocated for work on rehabilitation, drought, and advance measure projects will continue. Allocations to new project activities during the CR period will be prioritized and resourced if funding is available.

(c) The following activities will not be funded during the CR period: improvements to existing EOC/Office facilities and/or equipment enhancements to include supplies, and other operational items for an Alternate EOC; new leases or contract initiatives; and hiring for vacant/new positions unless specifically approved by CECW-HS.

c. Obligation and Execution of FY 2010 Funds under the CR.

(1) New contracts may be awarded with CR funds for any project eligible for CR funds in accordance with paragraph 4.b.

(2) Contracts of \$20 million or less must be fully funded unless an alternative is approved by CECW-I in advance.

(3) Continuing Contracts.

(a) Since CR funds are limited, it is critical to include the paragraph below in any new contract awarded during the CR period that employs the “true” continuing contract clause (EFARS Part 252.232-5001) or the “special” continuing contract clause published in the PARC Instruction Letter (PIL 2006-05), and in contract notices during the CR period for any ongoing contract that employs either clause.

“Congress has appropriated limited funds through a stop-gap Continuing Appropriations act. Accordingly, pending enactment of the FY 2010 Energy and Water Development Appropriations and subsequent apportionment, we must reserve funds for your contract on a limited basis. The amount reserved for your contract through [insert the appropriate date] is \$xxx,xxx,xxx. After enactment of the Energy and Water Development Appropriations and apportionment, we will advise in writing of the amount reserved for your contract.”

(b) For each reservation of funds, the appropriate date is no later than the last day of the CR period. The amount reserved must be limited to the incremental amount (beyond carried-in undelivered orders on the continuing contract and carried-in unobligated funds on the PPA) needed to pay expected earnings under the contract terms for that contract through the date specified.

(4) Obligations of CR funds for labor should be limited to labor costs incurred during the CR period. Where the end of the CR period is sooner than the end of a pay period, CR funds should be obligated only for the portion of the pay period falling in the CR period.

(5) Any movement to or from a PPA of already-allotted CR funds is considered a reprogramming during the CR. The baseline amount for each PPA as of 30 September 2009 will be used during the CR period for determining the reprogramming limits under the CR, and will not be recalculated to include FY 2010 CR obligation authority. Reprogramming actions accomplished in FY 2009, as well as those accomplished during the CR period, are to be included in determining the cumulative amount of reprogrammings involving each PPA. (Note that moving funds to or from work that is within a PPA and is not itself a PPA is considered a “reallocation,” not a reprogramming, and is not subject to reprogramming limitations. Also, reconciliations after enactment of final appropriations are not subject to reprogramming limitations.)

d. Power Marketing Administration (PMA) Funding. When authorized, specific power purpose funding provided by the Power Marketing Administration (Specific Power) that are not part of the Federal appropriation may be 100% available, once apportioned.

e. Inland Waterway Projects.

(1) Inland waterway projects funded only from the general fund with FY 2009 funds will be funded only from the general fund during the CR period. Likewise, inland waterway projects cost shared from the Inland Waterways Trust Fund (IWTF) in FY 2009 will be cost shared during the CR period.

(2) To ensure that allotments of IWTF funds remain within the amount available in the IWTF, CECW-I will issue to each Division allotment limitations for projects funded from the IWTF, in increments no less frequent than monthly. The allotment limitations will be included in each FAD. Likewise, reservations of funds on any continuing contract for IWTF-funded projects must be made in increments no less frequent than monthly.

(3) No new contracts using the continuing contract authority, which includes incrementally funded contracts, may be advertised or awarded for inland waterways projects during the CR period.

(4) IWTF funds should be allotted to projects using account 3122, category-class-subclass 310. Funds are no longer allotted in account 96 20 8861.

(5) In accordance with Reference 3.c., all new contract awards and other financial commitments for inland waterways projects require the prior approval of the ASA(CW).

f. Execution Following Enactment and Pending Apportionment of Annual Appropriations.

(1) After the President signs an appropriations act into law, OMB automatic apportionment terminates. Agencies must submit SF132 apportionment requests to OMB for approval. OMB approval may take as much as 30 days. Volume 3, chapter 2, section 020504 of the DoD Financial Management Regulation (FMR) extends automatic apportionment for all DoD activities during this 30-day hiatus to the extent obligations are "reasonable and customary for the time period." To ensure that these criteria are met, HQUSACE will issue another 30-day increment of funding by FAD using the same formula and methodology as was used during the CR period. This includes continued limits on the amount allotted to inland waterway projects.

(2) Allotments of funds during the 30-day period pending apportionment should be consistent with the annual appropriations act and accompanying statement of managers. Allotments during this time should not necessitate later reconciliations.

(3) Obligations for continuing contracts and in-house labor should be limited to earnings through the end of the 30-day period pending apportionment, akin to the manner described in paragraphs 4.c.(3) and (4) above.

g. Reconciliation. Where funds allotted to a project in CEFMS differ from the initial work allowance, the Division, District, or FOA will reconcile the two, either by adjusting allotments or by adjusting work allowances using the REC, Reconciliation, code in P2-OFA.

5. Reimbursable Program. The following guidance will govern Civil Works reimbursed program activities during the CR period.

a. Transfer appropriations under agency symbol 96 may be obligated to the extent that obligation and/or contract authority is available, unless otherwise advised by HQUSACE or the transferring agencies.

b. Reimbursable work may proceed to the extent that activities have received valid reimbursable orders from customers.

6. Points of Contact. Questions regarding this guidance should be directed to Evelyn Specht, CERM-BC, 202-761-1073 for Resource Management Directorate matters, or Mark Mugler, CECW-IP, 202-761-4103 for Civil Works Program Integration matters. Questions particular to appropriations should be addressed to Sharron DaCosta-Chisley, CECW-IN, 202-761-4153 for Formerly Utilized Sites Remedial Action Program; Germaine Hofbauer, CECW-HS, 202-761-4970 for FC&CE; Margaret Gaffney-Smith, CECW-CO, 202-761-8560 for Regulatory Program; Cheryl Hill, CERM-B, 202-761-1104 for Expenses; and Mark Mugler for other appropriations.